

Message Text

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EB/CSB/BP-HWINTER

L/T-AROVINE

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FM SECSTATE WASHDC

TO AMEMBASSY NAIROBI IMMEDIATE

INFO USMISSION GENEVA

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E.O. 11652: N/A

TAGS: UNCTAD

SUBJECT:CODE OF CONDUCT: LEGAL CHARACTER

REF: NAIROBI 5026

1. IN RESPONSE TO PARAS. 7-11 OF REFTTEL, USDEL SHOULD
TAKE FOLLOWING POSITION. (A) GROUP B MUST MAKE CLEAR,
ON THE RECORD, THAT IT IS UNITED IN VIEW THAT IT WILL
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CONDUCT FUTURE NEGOTIATIONS ONLY ON THE PREMISE THAT

THE CODE OF CONDUCT ON TECHNOLOGY TRANSFER WILL BE VOLUNTARY. (B) HOWEVER, WE DO NOT INSIST THAT GROUP OF 77 NOW EMBRACE THE VOLUNTARY CHARACTER OF CODE; WE ARE WILLING TO LEAVE OPEN THE QUESTION OF THE VIEW OF THE GROUP OF 77 ON THE CODE'S LEGAL CHARACTER.

(C) WE ARE NOT WILLING, HOWEVER, TO PREJUDICE THE QUESTION OF THE CODE'S CHARACTER BY AGREEING THAT THE CODE, WHEN COMPLETED, SHALL BE DEALT WITH BY EITHER A CONFERENCE OF PLENIPOTENTIARIES, OR A DIPLOMATIC CONFERENCE OR A UNITED NATIONS CONFERENCE, SINCE ALL OF THESE TERMS APPLY OR MAY APPLY TO MODALITIES OF NEGOTIATING AND ADOPTING INTERNATIONAL INSTRUMENTS WHICH ARE BINDING IN INTERNATIONAL LAW. (D) WE COULD, NEVERTHELESS, AGREE

THAT THE CODE, WHEN COMPLETED, SHALL BE REFERRED "TO THE UNITED NATIONS GENERAL ASSEMBLY FOR APPROPRIATE ACTION". UNGA OCCASIONALLY IS FORUM FOR SIGNATURE OF TREATIES, E.G., THE COVENANTS ON CIVIL AND POLITICAL RIGHTS AND ECONOMIC AND SOCIAL RIGHTS, TREATY ON PRINCIPLES GOVERNING ACTIVITIES OF STATES IN EXPLORATION AND USE OF OUTER SPACE, CONVENTION ON SPECIAL MISSIONS, CONVENTION ON REGISTRATION OF OBJECTS LAUNCHED INTO OUTER SPACE, AND THE CONVENTION ON THE PROTECTION OF DIPLOMATS. BUT FAR MORE OFTEN, IT SIMPLY ADOPTS RESOLUTIONS WHICH, WITH EXCEPTIONS NOT RELEVANT HERE, ARE NOT BINDING. SOME SUCH RESOLUTIONS MAY BE ADOPTED AFTER EXTENDED NEGOTIATION AMONG STATES IN SPECIAL COMMITTEES, E.G., UNCTAD'S CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES (CERDS), WHICH IS THE APT PRECEDENT FOR THIS CODE OF CONDUCT. REFERENCE TO UNGA ACCORDINGLY WOULD KEEP OPEN ISSUE OF ULTIMATE LEGAL CHARACTER OF CODE IN NON-PREJUDICIAL WAY SATISFACTORY TO US. ALTERNATIVELY, REFERENCE TO THE UNCTAD TDB WOULD BE SIMILARLY ACCEPTABLE.

2. RE PARA. 10 REFTTEL, EXAMPLES FOLLOW: (A) A CONFERENCE OF PLENIPOTENTIARIES IS A CONFERENCE OF SPECIALLY ACCREDITED REPRESENTATIVES OF STATES HAVING FULL POWERS TO NEGOTIATE AND SIGN A TREATY. THE CURRENT GENEVA CONFERENCE ON REVISION OF THE GENEVA CONVENTIONS ON THE LAW OF WAR IS AN EXAMPLE. (B) A LIMITED OFFICIAL USE

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DIPLOMATIC CONFERENCE IS A TERM OFTEN APPLIED TO A PROCESS OF NEGOTIATING AND SIGNING AN INSTRUMENT THAT HAS BINDING FORCE IN INTERNATIONAL LAW, E.G., THE 1954 GENEVA CONFERENCE ON INDOCHINA. (C) A UNITED NATIONS CONFERENCE IS A CONFERENCE OFTEN CONVENED TO NEGOTIATE AND SIGN A TREATY, E.G., THE CURRENT THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, AND THE UN CONFERENCES ON THE LAW OF TREATIES, DIPLOMATIC RELATIONS,

CONSULAR RELATIONS, ETC. THESE TERMS ARE NOT MUTUALLY EXCLUSIVE. A CONFERENCE CONVENED BY UNGA TO CONCLUDE AND SIGN A TREATY COULD BE A CONFERENCE OF PLENIPOTENTIARIES, A DIPLOMATIC CONFERENCE, AND A UN CONFERENCE. ACTUAL FUNCTIONS OF CONFERENCE WOULD BE ESTABLISHED BY TERMS OF REFERENCE OF CONFERENCE AS SET OUT IN CONVENING RESOLUTION. AS INDICATED, BASIC POINT IS THAT CONFERENCE, HOWEVER TERMED, IS PARLIAMENTARY DEVICE REGULARLY USED TO PREPARE TREATIES. KISSINGER

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